



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 9, 1998

Mr. John T. Patterson
Assistant City Attorney
City of Waco
Legal Services
P.O. Box 2570
Waco, Texas 76702-2570

OR98-0403

Dear Mr. Patterson:

You ask this office to reconsider our ruling in Open Records Letter No. 97-2775 (1997). Your request for reconsideration was assigned ID# 113498.

The City of Waco (the "city") received two open records requests for, among other things, proposals submitted to the city in connection with an RFP for auctioneering services. In your original request for a ruling, you did not raise any of the act's exceptions to required public disclosure with regard to the requested proposals, but requested an open records decision from this office pursuant to section 552.305 of the Government Code. In Open Records Letter No. 97-2775 (1997), this office concluded that the city could not withhold any of the proposals under section 552.110 of the Government Code. Both the city and René Bates Auctioneers, Inc. ("Bates") now argue that the Bates proposal is excepted from disclosure under section 552.110.

The city has provided us with additional arguments in an attempt to demonstrate the applicability of section 552.110 to this request for information. You now argue that the disclosure of the requested information will significantly impair the city's ability to obtain this information in the future. A governmental body must explain the reasons why the stated exceptions apply within fifteen days of receiving the request. *See* Gov't Code §552.301. You did not timely submit the city's interests under section 552.110 in connection with the your original request for a ruling. Therefore, we do not address the city's arguments under the impairment prong of section 552.110 as explained in Open Records Letter No. 97-2775 (1997).

Bates has provided additional arguments for withholding portions of the requested information under the commercial or financial information prong of section 552.110. Specifically, Bates argues that release of the information will substantially harm its competitive position. To show substantial harm, a business enterprise must show by specific factual or evidentiary material that it actually faces competition and that substantial competitive injury would likely result from disclosure. *See* Open Records Decision No. 639 (1996) (citing *Sharyland Water Supply Corp. v. Block*, 755 F.2d 397, 399 (5th Cir.), *cert. denied*, 471 U.S. 1137 (1985)). In this instance, Bates has demonstrated how the release of its mail list and the dollar volume from private industry auctions would result in "substantial competitive injury." The city, therefore, must withhold those portions of the Bates proposal under section 552.110. The remaining information must be released. Open Records Letter No. 97-2775 (1997) is overruled to the extent it conflicts with this ruling.

If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Deputy Chief
Open Records Division

LRD/rho

Ref.: ID# 113498

cc: Ms. Michelle Bates
René Bates Auctioneers, Inc.
Route 4
McKinney, Texas 75070-9603

George Gideon Auctioneers, Inc.
1209 Jaguar Court
Winter Springs, Florida 32708

Johnson Auctions
P.O. Box 11009
Waco, Texas 76716

Mr. Wayne Evans
Wayne Evans Auction Co., Inc.
13401 Southwest Freeway, Suite 206
Sugar Land, Texas 77478